

STATE OF MICHIGAN  
COURT OF APPEALS

---

In the Matter of KOLLYN KENNETH-MICHAEL  
ANDERS, Minor.

---

KIM RISNER,

Petitioner-Appellee,

v

KENNETH MICHAEL ANDERS,

Respondent-Appellant.

---

UNPUBLISHED

May 22, 2007

No. 274226

Washtenaw Circuit Court

Family Division

LC No. 06-000017-NA

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g), (h), (j), (l), and (n)(i) pursuant to a petition brought by the minor child's guardian. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent does not argue on appeal that the statutory grounds for termination were not established, but asserts that several errors made by the trial court deprived him of his constitutional right to procedural due process. This Court reviews constitutional issues de novo. *Kampf v Kampf*, 237 Mich App 377, 381; 603 NW2d 295 (1999). Preserved constitutional issues are reviewed for harmless error beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Unpreserved constitutional issues are reviewed for plain error affecting substantial rights. *Id.* We find that no error occurred, making harmless error or plain error analysis unnecessary.

Respondent says that his right to procedural due process was violated when the trial court conducted the preliminary inquiry before receiving proof that respondent had been served with the petition. The preliminary inquiry was conducted on March 6, 2006, service of the petition on respondent in prison was affected on March 29, 2006, and respondent acknowledged its receipt at the April 12, 2006 hearing. A preliminary inquiry is distinguished from a preliminary hearing in that the child is not in temporary custody and there is no request for the child's removal. MCR 3.962; MCR 3.965. There is no requirement in the court rule governing a preliminary inquiry, MCR 3.962, that the trial court determine whether the respondent has been notified, as there is in the court rule governing a preliminary hearing, MCR 3.965(B)(1). Therefore, no error

occurred by serving respondent with the petition after the preliminary inquiry was held or in not ensuring service before the preliminary inquiry. The petition was served 14 days before the April 12, 2006 hearing, which although captioned a “pretrial” was actually the preliminary hearing at which respondent was asked whether he had received the petition, advised of his rights, appointed counsel, and asked whether the child had Native American heritage.

Respondent further argues that procedural due process was violated when the trial court repeatedly denied his requests for adjournment until he was released from prison, both because he had a right to be physically present for the proceedings and because distance and a faulty telephone connection negatively affected communication with his attorney and participation in the proceedings. No error occurred in failing to secure respondent’s physical or telephonic presence at the preliminary inquiry. MCR 3.962(B) states: “A preliminary inquiry need not be conducted on the record or in the presence of the parties.” Likewise, no error occurred in denying respondent’s requests to adjourn the proceedings to allow for his physical presence at other hearings because respondent did not have an absolute right to be physically present. MCR 3.973(D)(2) and (3); *In re Vasquez*, 199 Mich App 44, 48-49; 501 NW2d 231 (1993). Respondent was represented by counsel and telephonically present at all hearings but the preliminary inquiry.

Technical difficulty resulted in respondent’s inability to participate in part of the August 24, 2006 final pretrial, but respondent was represented by counsel at that hearing, and he was provided an opportunity to respond once he was reconnected. Respondent sets forth no examples of ineffective communication with counsel due to distance. Rather, the lower court record showed that counsel for respondent represented him effectively and advanced all arguments respondent requested. No procedural error occurred when the trial court denied respondent’s requests to adjourn the proceedings to allow respondent to be physically present.

Also, respondent contends that procedural error occurred when the trial court held the dispositional hearing immediately following the adjudication trial. The two phases of the termination process, adjudication and disposition, must be separate and distinct and may not be conflated into one proceeding because each has different standards for admissibility of evidence and of proof, but the interval of time between the two segments is within the discretion of the trial court. MCR 3.973(C); *In re Nunn*, 168 Mich App 203, 206-208; 423 NW2d 619 (1988). The trial court recognized the different standards of proof during the adjudication and disposition phases, and noted on the record when it was moving from the adjudication phase to the dispositional phase, making them separate phases even though they occurred without being separated by a significant interval of time. Therefore, no procedural error occurred.

Additionally, procedural error did not occur when the trial court admitted certain evidence only for best interests during the adjudicative phase. Termination was requested at the initial disposition and therefore, legally admissible evidence was required to establish the statutory grounds for termination, while only relevant evidence was required relative to best interests. MCR 3.977(E)(3); MCR 3.977(G)(2). The parties and the trial court discussed the different standards of admissibility applicable to the jurisdictional and dispositional phases, agreed that recalling every witness for a separate best interests hearing was impracticable, and carefully designated certain evidence as admissible during the trial only with regard to best interests.

Lastly, the evidence did not show that termination of respondent's parental rights was clearly contrary to the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent argues that he could have presented additional best interests evidence if a separate best interests hearing was held. However, the evidence adduced at trial and arguments made during respondent's closing statement included all of the arguments he claims he would have later raised, such as agreeing to the child's continued guardianship and paying child support, and on appeal, respondent sets forth no new best interests arguments.

The evidence was clear that respondent had been an unfit parent to his children for over 20 years and that contact with him would be emotionally and socially harmful to Kollyn. Kollyn needed a permanent, fit home, and termination of parental rights was necessary to allow for the stability of adoption. Respondent petitioned to terminate Kollyn's guardianship during this proceeding, and although he changed his mind by the time of adjudication, continuing a guardianship instead of facilitating adoption would place Kollyn's permanency at risk whenever respondent decided to petition again. In addition, respondent's promise to provide child support was hollow in light of his enormous support arrearage.

Affirmed.

/s/ Helene N. White  
/s/ Henry William Saad  
/s/ Christopher M. Murray